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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,078	05/31/2001	Thomas D. Taggart	STEU-3250	9319

5409 7590 11/18/2004

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EXAMINER	
TAWFIK, SAMEH	

ART UNIT	PAPER NUMBER
3721	

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/871,078	TAGGART, THOMAS D.	
	Examiner	Art Unit	
	Sameh H. Tawfik	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 October 2004* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *20,22-39,41-51,53-64 and 67-73* is/are pending in the application.

4a) Of the above claim(s) *22-34,48-51,53-62,64 and 73* is/are withdrawn from consideration.

5)☒ Claim(s) *45-47* is/are allowed.

6)☒ Claim(s) *20,35-39,41-44,63 and 67-72* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I (claims 20, 35-39, 42, 45-47, 63, and 67-73) in the reply filed on 10/06/2004 is acknowledged. The traversal is on the ground(s) that on 01/10/2002 the examiner issued a restriction which is inconsistent with the current restriction requirement. The examiner required restriction between Group I, claims 20 and 22 drawn to method and apparatus for automatically aseptically bottling classified in 53/426and Group II, claims 23-34 drawn to an aseptic processing apparatus for aseptically bottling classified in 53/79. It is not clear why the examiner has now decided to reclassify claim 22 from class 53/426 to class 53/79. This is not found persuasive because the examiner believes that as disclosed on the restriction of paper 09282004, there are two different inventions which will burden the examiner keep re-searching and re-considering every time the applicant amend the claims.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

Claims 67-71 are objected to because of the following informalities: claims 67-71 are depending from canceled claim 65. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 20, 35-39, 41-44, 63, and 67-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over BOSCH in view of De Stoutz (3,934,042).

BOSCH discloses a method for aseptically bottles comprising the step and means for providing a plurality of bottles (Figs. on page 3); aseptically disinfecting the plurality of bottles (page 2, column 1); aseptically filling the aseptically disinfected plurality of bottles with the foodstuffs (page 2, columns 1 and 2); and aseptically disinfected plurality of bottles at a rate greater than 100 bottle per minute (page 2, column 1) note that the machine can be operated to produce 33,600 bottle per hour which is equal to 560 bottles per minute, wherein the disinfecting is with hot atomized hydrogen peroxide (page 1, column 2, lines 3 and 4; column 3, lines 1-4; page 2, column 2, lines 7-13 and column 3, lines 4-6), means for disinfecting an interior of the bottles (page 2, Fig. at the bottom right corner). BOSCH does not disclose aseptically filling the bottles with aseptically sterilized foodstuffs. However, Stoutz discloses the step and means for aseptically sterilized foodstuffs (column 1, lines 5-10) to increase the shelf life or storability of the treated beverage (column 1, lines 22-24)..

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified BOSCH's method for aseptically bottling foodstuffs by having the step and means for aseptically sterilized foodstuffs, as suggested by Stoutz, in order to increase the shelf life or storability of the treated beverage (column 1, lines 22-24).

Bosch neither disclose that the bottles are in an upright position during disinfecting. However, it would have been an obvious matter of design choice to have modified Bosch's method by having the bottles in an upright position during disinfecting to avoid the step of rotating the bottles and simplify the process for aseptically bottles, since applicant has not

disclosed that bottles are in an upright position during disinfecting solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with disinfecting the bottle upside down as suggested by Bosch.

Regarding claim 37: the reference of the prior art discloses the claimed invention except for the plastic is selected from the group of polyethyelene terepthatlate and high density polyethylene. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified BOSCH's method for aseptically packaging aseptically sterilized foodstuffs by having plastic is selected from the group of polyethyelene terepthatlate and high density polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a mater of obvious design choice to make the bottles lighter and un-breakable. *In re Leshin; supra.*

Regarding claim 39: BOSCH discloses capping the container with aseptically disinfected lid (page 2, column 1).

Regarding claims 41 and 43: BOSCH discloses disinfecting the interior of the plurality of container includes the application of the hydrogen peroxide spray and the activation and removal of the hydrogen peroxide using a sterilized air (page 2). BOSCH does not disclose the range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified BOSCH's method for aseptically packaging aseptically sterilized foodstuffs by having range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen

peroxide using hot air about 24 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, to come up with the best disinfecting result of the bottles. *In re Aller, 105 USPQ 233.*

Regarding claim 42: BOSCH discloses a feedback control system (page 2, line 3) for maintaining aseptic container conditions.

Regarding claim 63: Bosch nor Stoutz disclose that the aseptically sterilized foodstuffs are not a beverage. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Bosch in view of Stoutz method for aseptically bottles by having the aseptically sterilized foodstuffs are not a beverage, since the examiner takes an official notice that the aseptically sterilized beverage or non-beverage foodstuffs is old, well known, and available in the art, and Stoutz's method for sterilizing beverage foodstuff is capable of sterilize any other food products to increase the storage life of the food package.

Regarding claim 67: Bosch discloses that the bottles are made from glass (page 2, column 3, lines 4 and 5). Bosch does not disclose that the bottles are made of plastic. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Bosch's method for aseptically bottles by having the bottles are made of plastic, since the examiner takes an official notice that plastic bottles are old, well known, and available in the art to make the bottle lighter and un-breakable.

Regarding claim 71: Bosch discloses that the aseptically disinfecting the bottles includes an application of the hot hydrogen peroxide spray into an interior of the bottle (page 2, column 1,

lines 7-10 and column 2, line 7-13) and removal of hydrogen peroxide using hot sterilized air (page 2, lines 10-12).

Regarding claim 72: Bosch does not disclose that aseptically denotes meeting the United States FDA level of aseptic. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Bosch's a method for aseptically bottles by having the aseptically denotes meeting the United States FDA level of aseptic, since the examiner takes an official notice that aseptically denotes meeting the United States FDA level of aseptic is old, well known, and available in the art and applicant admitted in the background of the invention that packaging of food products and an aseptic filler must meet FDA approval (page 2, lines 18-22), to increase the storage life of the food products.

Allowable Subject Matter

Claims 45-47 are allowed.

Response to Arguments

Applicant's arguments filed 07/08/2004 have been fully considered but they are not persuasive.

Applicant argues in page 11 of the arguments that Bosch does not teach or suggest "wherein said plurality of bottles are in upright position during disinfecting,". The examiner agrees with the applicant that Bosch does not teach or suggest "wherein said plurality of bottles are in upright position during disinfecting,", but the examiner as set forth believes that positioning the bottles in upright or downward position is just a matter of engineering design choice. Therefore, it would have been an obvious matter of design choice to have modified

Bosch's method by having the bottles in an upright position during disinfecting to avoid the step of rotating the bottles and simplify the process for aseptically bottles.

Applicant further argues in page 12 of the arguments that the examiner has offered no evidence or support of having the bottles in the upright position during disinfection. The examiner believes that such motivation and support was provided as set forth "to avoid the step of rotating the bottles and simplify the process for aseptically bottles".

Applicant argues in page 13 of the arguments that it is not an obvious design choice to flip the container over (from Bosch) to obtain portions of the claimed invention. The examiner as set forth believes it is just a matter of design choice having the bottles arranged upside down or in upright position as long as they are disinfected.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

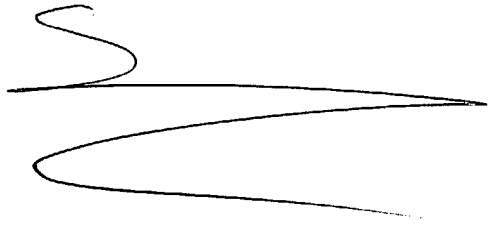
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is 571-272-4470. The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sameh H. Tawfik
Patent Examiner
Art Unit 3721



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